

The opinion in support of the decision being
entered today is not binding precedent of the Board.

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Paper

By: Trial Section Merits Panel
Board of Patent Appeals and Interferences
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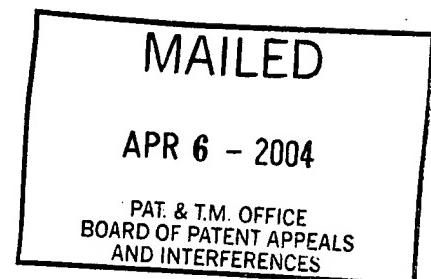
Filed: April 6, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

WEI-WEI ZHANG
and JACK ROTH

Junior Party,
Application 08/222,285



v.

GENCELL S.A.
(Michel Perricaudet, Emmanuelle Vigne and Patrice Yeh)

Senior Party,
Application 08/397,225

Patent Interference No. 104,828 (CAS)

Before: SCHAFER, TORCZON and SPIEGEL, Administrative Patent Judges.

SPIEGEL, Administrative Patent Judge.

JUDGMENT -- RULE 662

This interference was declared with four (4) counts (Paper 1, p. 5). As a result of the (a) decision on Gencell preliminary motion 1 (Paper 81) and reconsideration thereof

(Paper 87), (b) entry of amended Perricaudet '225 claims 1, 2 and 11 (Paper 82), (c) decision on remaining motions (Paper 96), it was determined that there is no interference-in-fact between the subject matter of the claims designated as corresponding to Count 3, i.e., between the subject matter of Zhang claims 1-10, 31-32 and 34-51 and the subject matter of Perricaudet '225 claim 42 (Paper 96, pp. 24-28).

The interference was redeclared with three (3) Counts. Count 1 remained the same. Counts 2 and 4 were replaced by Counts 5 and 6. [Paper 97.]

Senior party Gencell/Perricaudet conceded the subject matter of Count 1 (Paper 96, p. 9; Paper 97, p. 2). Therefore, judgment was to be awarded against Gencell/Perricaudet in due course (Paper 97, p. 2).

"Pursuant to 37 C.F.R. § 1.662(a), party Zhang hereby abandons the contest as to Count 5 ... and Count 6" (Paper 102). Accordingly, it is

ORDERED that judgment on priority

(a) as to Count 1 is awarded against senior party MICHEL PERRICAUDET, EMMANUELLE VIGNE and PATRICE YEH (GENCELL); and,
(b) as to Counts 5 and 6 is awarded against junior party WEI-WEI ZHANG and JACK ROTH (Paper 97, pp. 2-4).

FURTHER ORDERED that senior party MICHEL PERRICAUDET, EMMANUELLE VIGNE and PATRICE YEH (GENCELL) is not entitled to a patent containing claims 1-3, 9, 12-18, 28, 30, 35 and 40-41 (corresponding to Count 1) of application 08/397,225, filed March 28, 1995.

FURTHER ORDERED that junior party WEI-WEI ZHANG and JACK ROTH is

not entitled to a patent containing claims 17-23 (corresponding to Counts 5 and 6) of application 08/222,285, filed April 4, 1994.

FURTHER ORDERED that a copy of this paper shall be made of record in the files of U.S. application 08/333,680 and U.S. application 08/258,416.

FURTHER ORDERED that a copy of the decision on motions filed January 30, 2004 (Paper 96) shall be made of record in the files of U.S. application 08/222,285 and U.S. application 08/397,225.

FURTHER ORDERED that if there is a settlement agreement which has not been filed, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.


RICHARD E. SCHAFER
Administrative Patent Judge


RICHARD TORCZON
Administrative Patent Judge

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BOARD OF PATENT
APPEALS AND
INTERFERENCES


CAROL A. SPIEGEL
Administrative Patent Judge

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